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May 24, 2004

Ms Marlene H. Dortch, Secretary
Federal Communications Commission
445 - 12th Street, SW
Washington, DC 20554

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MAY 24 2004

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: RM - 10960

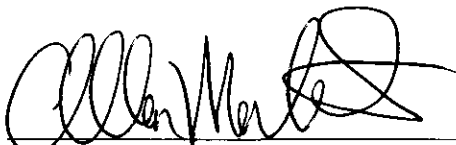
Dear Ms Dortch:

Keymarket Licenses, LLC, Forever Broadcasting, LLC, Forever Communications, Inc., Forever of Johnstown, LLC, Megahertz Licenses, LLC and Forever of PA, LLC hereby submit an original and four (4) copies of their "Comments" in support of the above-referenced Petition for Rulemaking filed by First Broadcasting Investment Partners LLC.

Should any questions arise with respect to this matter, please contact the undersigned counsel.

Respectfully submitted,

KAYE SCHOLER LLP

By: 
Allan G. Moskowitz

AGM/lis

Enclosures

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BEFORE THE

Federal Communications Commission

RECEIVED

WASHINGTON, D C 20554

MAY 24 2004

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

IN THE MATTER OF:)
)
) MM Docket No. _____
Amendment of the Commission's) RM-10960
Rules Governing Modification)
FM and AM Authorizations)
)
TO: Chief, Mass Media)

COMMENTS

Keymarket Licenses, LLC, Forever Broadcasting, LLC, Forever Communications, Inc., Forever of Johnstown, LLC, Megahertz Licences, LLC and Forever of PA, LLC (collectively "Keymarket")¹ hereby submits their "Comments" supporting the above-referenced "Petition for Rulemaking", ("Petition") filed by First Broadcasting Investment Partners LLC ("First Broadcasting") which appeared on FCC "Public Notice", Report No. 2657 on April 22, 2004. In support thereof, the following is respectfully shown:

Introduction

1. First Broadcasting's Petition recognizes and aptly summarizes the changes to the FM allocation landscape and the Commission's shrinking resources that have combined in the last few years to produce an extensive backlog of allocation proceedings. Rather than reiterating the Petition's arguments,

¹ The respective licensees are commonly owned and collectively are the licensees of over fifty (50) AM and FM stations. The stations licensed to each licensee are attached as Exhibit 1.

facts and data, Keymarket commends First Broadcasting for its comprehensive review and imaginative proposals and respectfully incorporates by reference the Petition into these Comments.

2. Keymarket has itself been victimized by the growing backlog and has experienced time lags of nine months to a year from the filing of the Petition for Rulemaking to the mere release of a Notice of Proposed Rulemaking for a single station's community of license change. Keymarket also agrees that despite the dedication, efforts and desire of the Commission to resolve the situation, it is clear that the Audio Division does not have the staff to throw at the problem nor does it seem that sufficient resources will be allocated to it anytime soon to allow it to stem the ever growing crisis. Needless to say, the allocation rulemaking backlog is inimical to the public interest in that it not only delays delivering expanded service to the listening public, it often prevents licensees from even proposing such beneficial changes. Furthermore, in light of the actual demographic changes in the United States, the processing backlog presents an obstacle to the underlying purpose and application of Section 307(b) of the Communications Act.

3. Keymarket also agrees that the existing backlog can and should be a catalyst for updating and, to some extent, reforming the Commission's allocation processes. As noted, there have been significant changes in FM and AM broadcasting since the Commission's last comprehensive review of the FM Table of Allotment procedures in 1982 including thousands of new

allotments, new classes of FM channels, increases in transmitting power for FM stations and significant technical improvements in FM receivers. Consequently, Keymarket agrees that the FM Allotment processes are overdue for review and that the current backlog mandates that the current procedures and policies be revisited and re-thought.

FM Station Community of License Change

4. Keymarket strongly supports changing the Commission's rules to allow FM stations to apply for community of license changes via an application on FCC Form 301 for minor modification of facilities. The current system by which applicants seek to change their community of license through the rulemaking process is taking nearly two years while minor modification application would take approximately four months, barring any requests for waiver. We support First Broadcastings approach, i.e., that the requested community of license, should be mutually exclusive with the existing community of license subject to the same first-come first serve procedure used to process other minor modification applications. Further, we agree that the application should be accompanied by a Section 307(b) showing demonstrating how a proposed change provides a "fair, efficient and equitable distribution of radio services".

Relocation of an FM Sole Local Service to a New Community of License Without a First Local Service

5. Keymarket strongly supports the Petition's proposal that the FCC establish a presumption that it is in the public

interest to permit an FM station providing a community's sole local service to move to a new community as its first local service provided that: at least two other stations provide a 70 dBu signal to the current community; the station's 70 dBu contour proposes to serve a larger population; and the move does not cause any short-spacing and/or resolves any existing short spacing.² Keymarket agrees that use of the foregoing presumptions would provide the Commission with enough flexibility to permit modifications that serve the public interest, prioritize first local service, expedite the process and free up scarce Commission resources.

**Removing Non-Viable FM Allotments
from the FM Table of Allotments**

6. Keymarket agrees that the existence of vacant, never to be used allocations in the Table of Allotments is a waste of valuable spectrum and an impediment to the actual purpose of Section 307(b) of the Communications Act. The current process of deleting these allocations via a separate rulemaking consumes unnecessary time and Commission resources. Therefore, Keymarket supports the proposal that the Commission (1) include all present vacant FM allotments in a single upcoming auction; (2) delete

² While the Petition utilizes the 70 dBu contour as its standard, Keymarket notes that analog FM radios have improved significantly in sensitivity and selectivity in the past decades and the use of DAB systems will be prevalent in the immediate future. Consequently, Keymarket submits that the 60 dBu service contour now provides adequate coverage comparative to what the predicted 70 dBu contour was when it became the standard in the 1960's.

those allotments that are not purchased at auction; and (3) delete any allotments that are purchased but then not built out during the three year construction permit period. Moreover, Keymarket submits that the Commission should, in the future, delete allotments by operation of law where no application is filed for a two-year period. Keymarket also supports the proposal that if an FM station licensee wishes to surrender its license, the Commission should be able to grant such a request and delete the station's allotment to clear the spectrum.

One-Time Settlement Window

7. Keymarket supports the proposal that the Commission allow a one-time settlement window to allow parties to negotiate settlements to resolve the backlog of pending FM rulemaking and during which Section 1.420(j) of the Commission's Rules would be waived to allow settlements to be paid in excess of the withdrawing party's expenses.

AM Change of Community of License

8. Keymarket also supports the proposal that the Commission should allow change of an AM station's community of license through a minor modification application. At present, change of an AM station's community of license is a major modification which can only be substituted during "filing windows" that are often separated by years. The process can entangle the licensee with a filing for a new station and unnecessarily obstruct what is essentially a proposed improvement in the station's service. Furthermore, filing windows merely

encourage hundreds and sometimes thousands of applications to be filed simultaneously creating almost a "panic psychology" and forcing unnecessary and periodic burdens on the Commission's processes. Instead, Keymarket supports the proposal to permit applicants to seek a change in the community of license of an AM station through a minor modification application similar to the FM one-step minor modification process. These applications should be accepted only if they are mutually exclusive to the licensee's existing AM license, comply with other applicable rules and contain Section 307(b) showings.

**Downgrade of Class C Stations
to Class C0 Status**

9. Keymarket supports the proposal to streamline the process for downgrading a Class C station to Class C0 status. At present, the Commission allows adjacent stations to request that the FCC downgrade individual Class C stations to Class C0 status to permit other stations to move or upgrade a facility if the proposed facility would be short-spaced to a Class C station but fully spaced to a Class C0 assignment. The time periods built into the current process, i.e., allowing thirty (30) days for the Class C station to respond to the request for a downgrade; another six (6) months to file an upgrade application which may be ungrantable due to aeronautical or other reasons or, even if granted, never to be built due to zoning issues, and thereby allowing a licensee another three years to put off the downgrade, unreasonably subverts the process and the Commission's intention

to promote more efficient use of the FM spectrum. Consequently, Keymarket supports First Broadcasting's proposed rule changes to expedite the Class C downgrade procedure which include (1) tighter scrutiny of the Class C station's modification applications; (2) expediting the processing of downgrade applications; (3) reducing the amount of time available for Class C stations to file a modification application from 180 to 90 days and (4) exercising increased oversight of the Class C station's building process.

Additional Proposals

10. In addition to the commendable proposals made by First Broadcasting, Keymarket submits the following two additional changes to the Commission's rules and policies which it believes will assist in relieving the backlog of existing and future rulemaking petitions.

Imposition of Rulemaking Filing Fee

11. While the statutory fee schedule contains specific fees for petitions to amend the FM Table of Allotments to specify a higher class of channel or a new community of license, the Commission presently assesses the fee only if the petition ultimately succeeds, i.e., when the modification application is filed. Moreover, the Commission assesses the fee only in the case of petitions to change an existing allotment, not to add a new allotment. Consequently, under current practice, filing a petition for rulemaking to add a new allotment or modify an existing allotment is free upon filing. As a result, speculative

filings are encouraged in that there is no detriment to merely filing a petition for rulemaking despite the fact that the allocation itself, if granted, may never be applied for. Consequently, the Commission has been flooded with rulemaking petitions for new allocations for which no fee may ever be paid and, therefore, no cost is ever recovered by the government. Keymarket submits that this "freebie" is one of the primary factors for the current backlog. Filing petitions to add new channels is relatively cheap when done on a large scale and many of these petitions conflict with petitions to modify existing stations' facilities, thereby "paralyzing" the system.

12. Consequently, Keymarket proposes that the Commission should require that a filing fee accompany (1) any initial petition or counterproposal to amend the FM Table of Allotments to add a new allotment or change community of license or request a higher class channel. The amount of the filing fee would be the amount currently required to be filed at the time of the filing of an application by the successful rulemaking proponent. Filing fees at this stage of the rulemaking process will help to discourage speculative and frivolous petitions to amend the FM Table of Allotments. This will, in turn, cut down on the number of petitions filed and assist in preventing any future backlogs which will further the rapid introduction of new and improved broadcast service to the public since Commission resources will be freed to process bona fide petitions designed to improve service and initiate service to under served areas.

Public Access to the FM and TV
Allotment Rulemaking Proceedings

13. The processing of a petition for rulemaking can be a long process depending on its complexity. Traditionally, most petitions are processed in the order in which they are filed. But for any given petition it is not predictable as to how long the process will take. There are various reasons why a petition may not be processed in the order in which it was received, and some complex proposals actually take less time than simpler proposals. Because the length of time is variable, it is often necessary for rulemaking proponents or their representatives to make multiple telephone calls or email inquiries to the FCC staff to determine where their proposal stands in the processing queue. The number of such contacts can be greatly reduced by the publication of the FM and TV rulemaking backlog list. Such lists have been published for various categories of applications for many years. As a result, interested parties can monitor the progress of the processing and predict with some reliability when the Commission will take action. This allows applicants to plan their activities and time their funding commitments, resulting in efficiencies and savings to the public. In addition, the application processing staff are contacted much less often and are able to spend more time processing applications and less time responding to inquiries. The same conservation of resources can be realized if the allocation petition backlog were published on the Commission's website. AS in the case of applications, the

FCC staff can make notations or comment as to the cause of a delay where appropriate.

Conclusion

14. Keymarket reiterates its support for the proposals enumerated in First Broadcasting's Petition and those newly proposed herein. Keymarket submits that implementation of any or, hopefully, all of the above proposals will assist the Commission in reducing the work load of the Commission staff and allow it to better marshal its resources. Further, adoption and implementation of these proposals will allow FM applicants and existing broadcasters to better plan and implement modifications to their facilities and improvement in their service to the listening public. Finally, adoption and implementation of any or all of these proposals will allow the listening public to obtain improved service in a much timelier fashion.

Respectfully submitted,

By: _____
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(202) 682-3500

Attorney for Keymarket
Licenses, LLC, Forever
Broadcasting, LLC,
Forever Communications,
Inc., Forever of
Johnstown, LLC,
Megahertz Licences, LLC
and Forever of PA, LLC

Dated: _____

EXHIBIT 1**BROADCAST LICENSES**

as of 3/16/04

Call Sign	Location	Facility Identifier
Forever of PA, LLC		
WFBG(AM)	Altoona, PA	38269
WFGY(FM)	Altoona, PA	38265
WFGY-FM1 CP	Johnstown, PA	13529
WLTS(FM)	State College, PA	38271
WRKY-FM	Hollidaysburg, PA	72316
Forever Broadcasting, LLC		
WICT(FM)	Grove City, PA	74469
WSPO(AM)	Johnstown, PA	15327
WMTZ(FM)	Johnstown, PA	15328
WALY(FM)	Bellwood, PA	58312
WPRR(FM)	Altoona, PA	47090
WVAM(AM)	Altoona, PA	47089
WMAJ(AM)	State College, PA	48923
WBHV(FM)	State College, PA	48926
WOWY(FM)	Pleasant Gap, PA	30445
WMGW(AM)	Meadville, PA	24942
WGYI(FM)	Meadville, PA	24940
WHUZ(FM)	Saegertown, PA	12918
WFRA(AM)	Franklin, PA	49777
WOXX(FM)	Franklin, PA	49789
WOYL(AM)	Oil City, PA	21420
WGYI(FM)	Oil City, PA	21421
WTIV(AM)	Titusville, PA	74089
WXXO(FM)	Cambridge Springs, PA	76254
WUUZ(FM)	Cooperstown, PA	88380
Forever of Johnstown, Inc.		
WUZI(FM)	Portage, PA	25733
WUZI-FM1	Johnstown, PA	121825
WNTJ(AM)	Johnstown, PA	72964
WKYE(FM)	Johnstown, PA	72965
WNTW(AM)	Somerset, PA	56364
WUZY(FM)	Somerset, PA	56363
Megahertz Licenses, LLC		
WWLY(FM)	Huntingdon, PA	28132
WHUN(AM)	Huntingdon, PA	28131
WXMJ(FM)	Mount Union, PA	3956
Forever Communications, Inc.		
WBVR-FM	Auburn, KY	71244
WRKY(AM)	Murray, KY	73270
WFGE(FM)	Murray, KY	73269
WNBS(AM)	Murray, KY	29695

WBGN(AM)	Bowling Green, KY	27243
WUHU(FM)	Smiths Grove, KY	27242
WLYE-FM	Glasgow, KY	57897
Keymarket Licenses, LLC		
WASP(AM)	Brownsville, PA	65708
WOGG(FM)	Oliver, PA	65709
WFGI(AM)	Charleroi, PA	21215
WOGI-FM	Duquesne, PA	21214
WOMP(AM)	Bellaire, OH	3038
WOMP-FM	Bellaire, OH	3039
WSTV(AM)	Steubenville, OH	65407
WOGH(FM)	Burgettstown, PA	65408
WOHI(AM)	East Liverpool, OH	13710
WOGF(FM)	East Liverpool, OH	13711
WPNT(AM)	Connellsville, PA	39859
WUKL (FM)	Bethlehem, WV	4996
WPKL(FM)	Uniontown, PA	33828

CERTIFICATE OF SERVICE

I, Laura P. Sinner, Secretary at the law firm of Kaye Scholer LLP, hereby certifies that a copy of the foregoing *Comments* was sent by first-class mail, this 24th day of May, 2004 to the following:

Tom W. Davidson, Esq.
Akin Gump Strauss Hauer & Feld, LLP
1676 International Drive
Penthouse
McLean, Virginia 22102

Attorney for First Broadcasting Investment
Partners LLC

A handwritten signature in black ink, reading "Laura P. Sinner". The signature is written in a cursive, flowing style. The first name "Laura" is written with a large, looped capital "L". The middle initial "P." is written with a small capital "P" followed by a period. The last name "Sinner" is written with a capital "S" and a trailing flourish.

Laura P. Sinner